UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

ONESOURCE BUILDING SERVICES, INC. [1]/

Employer

and Case No. 31-RC-7748

UNITED SERVICE WORKERS OF AMERICA, LOCAL 101

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under § 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]/

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]/

3. The labor organizations involved claim to represent certain employees of the Employer.[4]/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the § 9(c)(1) and §§ 2(6) and (7) of the Act.[5]/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of § 9(b) of the Act:

INCLUDED: All cabin and airline cleaners, dispatchers, custodians, headset workers, chemical room workers, lavatory and water room service employees, buffers, warehousemen, auto mechanics, team leaders, and senior leads employed by the Employer at Terminal 1, Los Angeles International Airport and at Burbank Airport.

EXCLUDED: Office and plant clerical employees, technical employees, salesmen, professional employees, all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION[6]/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **United Service Workers of America, Local 101, by Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL-CIO, CLC, or by neither**.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer

with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **May 16, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

Under the provision of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 23, 2000.

DATED at Los Angeles, California this 9th day of May, 2000.

/s/ Laurel Spillane

Laurel Spillane, Acting Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064

FOOTNOTES

1/ The Employer's name appears as corrected at the hearing.

2/ At the hearing, Local 101's motion to amend its petition to include the Employer's employees at the Burbank Airport was properly granted by the hearing officer.

3/ The Employer, OneSource Building Services, Inc., is a Delaware corporation engaged in the provision of airline cleaning and building janitorial services. The Employer has a principal place of business located in Los Angeles, California. During the past twelve (12) months, a representative period, the Employer derived gross revenues in excess of $500,000. from the provision of its services. During the same period, the Employer purchased and received goods, at its Los Angeles, California facility, valued in excess of $50,000. directly from enterprises located outside the State of California.

The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Thus, the Employer meets both the statutory and the Board's discretionary standards for asserting jurisdiction. Siemons Mailing Service, 122 NLRB 81 (1958).

4/ The parties stipulated, and I find, that United Service Workers of America, Local 101, the Petitioner, (Local 101), and Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL-CIO, CLC, the Intervenor, (IBT/572), are labor organizations within the meaning of Section 2(5) of the Act. IBT/572 was permited to intervene based on its bargaining relationship with the predecessor and Employer described below.

5/ World Service West/L.A. Inflight Service Co., LLC (World) and IBT/572 were signatories to a collective bargaining agreement, covering approximately 465 employees at Los Angeles International Airport (LAX) and six (6) employees at Burbank Airport (Burbank), which expired on June 3, 1999. Among the employees covered by the collective bargaining agreement were those who worked at Southwest Airlines' terminals located at LAX and Burbank.

On March 30, 1999, Local 101 filed a representation petition in Case 31-RC-7726 (hereafter Local 101's first petition) seeking to represent World's employees. On the same date, an employee filed a decertification petition in Case 31-RD-1410. When these petitions were filed, the employees in the petitioned-for unit herein were still employed by World. On April 19, 1999, however, the Employer herein learned from Southwest Airlines that it had been awarded the contract to provide services at Southwest's LAX and Burbank terminals that had previously been performed by World.

On April 20, 1999, pursuant to the Local 101's first petition, the Acting Regional Director issued a Decision and Direction of Election directing an election in a unit of World's employees: All cabin and airline cleaners, dispatchers, custodians, headset workers, chemical room workers, lavatory and water room service employees, buffers, warehousemen, auto mechanics, team leaders, and senior leads employed by [World] at Los Angeles International Airport and Burbank Airport. The election was conducted on June 9, 1999. The employees of the Employer did not participate in the election. On June 22, 1999, the Regional Director issued a Certification of Representative certifying Local 101 as the exclusive bargaining representative of World's employees.

In late April 1999, Randy Abril, a manager of the Employer, contacted IBT/572 business agent Hector Velez. Abril informed Velez that the Employer had been awarded Southwest's janitorial contracts at its LAX and Burbank terminals. Abril told Velez that the Employer wanted to enter into an agreement with IBT/572, and requested a copy of the extant collective bargaining agreement between IBT/572 and World. Whereupon, Velez asked Abril if the Employer was recognizing IBT/572 and, according to Velez, Abril responded affirmatively. Abril further stated that the Employer was willing to hire the employees currently working for World at the Southwest terminals; however, at the time of this conversation, the Employer had not yet offered employment to these employees. On May 25 and 26, 1999, the Employer actually began performing services for Southwest at LAX and Burbank respectively. All the Employer's employees servicing Southwest were former World employees.

According to Velez, by mid-May 1999 IBT/572 and the Employer had a verbal agreement with regard to the terms and conditions of a collective bargaining agreement. The evidence establishes that IBT/572 and the Employer executed separate copies of the collective bargaining agreement (Agreement) covering the petitioned-for employees on May 22, 1999 and June 14, 1999 respectively.

Local 101 filed the instant petition on June 18, 1999.

Positions of the Parties: At hearing, both IBT/572 and the Employer asserted that, pursuant to the Board's doctrine of contract bar, the Agreement bars the instant petition. In the alternative, the IBT/572 and Employer also assert the presence of a recognition bar to an election. Local 101 asserts that the evidence fails to establish the presence of a contract bar or a recognition bar to its petition. Additionally, Local 101 argues that application of the Board's successorship doctrine would unjustly defeat the petitioned-for employees' Section 7 right to self-determination. In this regard Local 101 contends that here, as former employees of World (the predecessor), the petitioned-for employees should be afforded the same right to an election as was afforded their former co-workers.

In RCA Del Caribe 262 NLRB 963 (1982), the Board held that the mere filing of a union representation petition by an outside, challenging union does not require or permit an employer to withdraw from, bargaining or executing a contract with the incumbent union. The Board has also held that RCA Del Caribe, *supra* requires a successor employer to recognize and bargain with the incumbent union of its predecessor's employees, even though a petition challenging the incumbent union's representation status is pending before the Board. See Castaways Management, Inc., 285 NLRB 954, 959 (1987); Planned Building Services, Inc., 318 NLRB 1049 n. 5 (1995). However, a successor employer inherits the question concerning representation of its predecessor's employees that was raised by the filing of a representation petition before the successor took over the predecessor's operations. See Unit Train Coal Sales, Inc., 234 NLRB 1265, 1270 (1978), enf. denied on other grounds NLRB v. Unit Train coal Sales, 636 F.2d 1121 (6th Cir. 1980); Sindicato Puertoriqueño de Trabajadores, 184 NLRB

538 n. 3 (1970). Further, in Weather Vane Outwear Corp., 233 NLRB 414 (1977), the Board held that when a second representation petition is filed during the pendency of an unresolved question concerning representation raised by an earlier, timely filed petition, the Board's contract bar doctrine is rendered inoperative as to the second petition. Id. at 415.

In the instant case, the evidence establishes that the Employer hired all of World's employees, without any hiatus, to perform substantially similar functions. Thus, the Employer is a successor to World. Therefore, pursuant to the above analysis, I conclude that the Employer was required to recognize and bargain with IBT/572, despite the pending question concerning representation raised by Local 101's timely filed first petition. Moreover, the Employer and IBT/572 entered into the Agreement covering the Employer's employees at Southwest Airlines' terminals at LAX and Burbank in accord with the principles of RCA del Caribe.

I further conclude, however, that the Agreement executed by the Employer and IBT/572 does not bar the processing of Local 101's second petition herein. Normally, under the Board's contract bar principles, the Board will not process a representation petition filed during the term of a valid collective bargaining agreement unless the petition was filed 60-90 days before the expiration of the contract. Deluxe Metal Furniture, Co., 121 NLRB 995, 1001 (1958). Thus, the instant petition (Local 101's second), which was filed on June 18, 1999, typically would be barred by the Agreement. Nonetheless, in this case, the Employer and IBT/572 entered into the Agreement at a time when there was a pending question concerning representation raised by Local 101's first petition. Further, when Local 101 filed the instant petition on June 18, 1999, the question concerning representation remained unresolved as no certification had yet issued. Heritage at Norwood, 322 NLRB 231 (1996). Thus, applying the principle enunciated in Weather Vane, *supra*, to the unique facts of this case, since Local 101's second representation petition was filed during the pendency of an unresolved question concerning representation raised by its first, timely filed petition, the Board's contract bar doctrine is rendered inoperative as to the later

petition. Accordingly, I conclude that there is no bar to the instant, second petition for an election.

There are approximately 26 employees in the bargaining unit.

6/ In accordance with § 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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